No. 76-1482

In the Supreme Court of the United States

OCTOBER TERM, 1977

LAKESIDE MERCY HOSPITAL, INC., PETITIONER

v.

INDIANA STATE BOARD OF HEALTH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1482

LAKESIDE MERCY HOSPITAL, INC., PETITIONER

v.

INDIANA STATE BOARD OF HEALTH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

Petitioner contends that it is entitled to federal reimbursement for the capital costs of a proposed hospital because a state agency did not act on petitioner's application within sixty days, notwithstanding that the agency was then under a state court injunction prohibiting it from acting on the application.

1. Under Title XVIII of the Social Security Act, popularly known as the Medicare Act, 79 Stat. 291, as amended, 42 U.S.C. 1395 *et seq.*, the federal gov-

ernment reimburses providers of services for "all reasonable costs" actually incurred in connection with furnishing hospital services to the aged. Similarly, under Title XIX of the Social Security Act, popularly known as the Medicaid Act, 79 Stat. 343, as amended, 42 U.S.C. 1396 *et seq.*, Congress established a federal-state program to provide reimbursement for the cost of providing "necessary medical services" to the poor. Each of these programs includes as reimbursable items the cost of depreciation, debt service, and other capital-related costs.

In 1972, Congress amended the Social Security Act to insure that reimbursement would, under Medicare and Medicaid, not be made for any unnecessary capital expenditure. 42 U.S.C. (Supp. V) 1320a-1. That statute authorizes the Secretary of Health, Education, and Welfare to enter into agreements providing for the appointment of a state agency as a "designated planning agency" with responsibility for reviewing proposed capital expenditures and recommending whether they should be approved. The statute further provides that the Secretary shall not include capital costs in determining federal payments if he determines, *inter alia*, that the designated planning agency had, "within a reasonable period after receiving * * * notice [of a proposed capital expenditure]", notified the person proposing the expenditure that it did not satisfy the agency's standards or plans. 42 U.S.C. (Supp. V) 1320a-1(d)(1)(B)(i). Pursuant to the statute the Secretary promulgated regulations establishing the time within which the planning agency

must act upon a notice of a proposed capital expenditure—in cases such as this, within 60 days from receiving the notice—and providing that an agency's failure to act within the designated period constitutes approval of the application. 42 C.F.R. 100.106. See Pet. App. 8, n. 7; 20, n. 11; 30-31.

2. In 1973 respondent Indiana State Board of Health, the designated planning agency in Indiana, determined that additional hospital beds were needed in the Fort Wayne area (Pet. App. 5). Responding to that determination, Community Hospital of Fort Wayne submitted a proposal to the agency to construct a new hospital. The Board rejected the proposal on July 5, 1974, and, after exhausting administrative review, Community Hospital brought suit in state court for judicial review. Meanwhile, petitioner had submitted its proposal for a hospital to the agency. On December 9, 1974, 45 days after petitioner's proposal had been filed, the state court temporarily enjoined the Board from acting on any proposal for health facilities in the area during the pendency of the suit; on December 31, 1974, the court issued a preliminary injunction to the same effect (Pet. App. 5, 6).

Three other hospitals in the area, but not petitioner, intervened in the state court action. On May 27, 1975, the state court dismissed Community Hospital's suit on the ground, *inter alia*, that it lacked jurisdiction to review the action of the Board, but the court enjoined the Board from acting on any proposals for health facilities in the Fort Wayne area

until the three intervening hospitals had an opportunity to submit their own proposals for meeting the need for additional hospital beds. Those hospitals submitted their proposals on June 30, 1975, and the Board disapproved petitioner's proposal on July 9, 1975 (Pet. App. 6).

Petitioner then brought suit in the United States District Court for the Northern District of Indiana, contending, *inter alia*, that the state court injunction had not suspended the running of time under the Secretary's regulations, and therefore that since petitioner's application had not been acted upon within 60 days of its submission, it must be deemed approved. The district court, in a thorough opinion (Pet. App. 1-23), rejected this and all other contentions raised by petitioner, and the court of appeals affirmed (Pet. App. 26-29).

3. The courts below correctly rejected petitioner's contention that its application must be deemed to have been approved. The issue in this case is not, as petitioner contends (Pet. 7-20), whether state courts may, under the Supremacy Clause, enjoin the processing of applications by a federal agency. Rather the issue is whether the 60-day time period set forth in the regulations was tolled by injunctions prohibiting the state agency from acting on petitioner's application. The injunctions plainly had that effect. Indeed, if the regulations were to be given the mechanical reading for which petitioner contends, there would be a substantial question whether they would be consistent with the statutory requirement

that the state planning agency have a "reasonable period" within which to consider proposals. 42 U.S.C. (Supp. V) 1320a-1(d)(1).

Here, a state court, in reviewing the denial of an application of a competing proponent of facilities, temporarily enjoined the state planning agency from acting on other applications for the same facilities until all applications could be considered together. Even if, as petitioner suggests (Pet. 14-15), the state court was without jurisdiction to issue the injunctions, the planning agency appropriately complied with the orders; it had no obligation to violate the injunctions on the questionable assumption that the court was without jurisdiction.[1] Moreover, as the district court stated (Pet. App. 19), in view of the statute's principal purpose to prevent unnecessary capital expenditures, "it would be unreasonable to

---

[1] We submit that the state court had jurisdiction to issue the injunctions preventing the Board from acting on petitioner's application. The state court ultimately concluded on May 27, 1975, that it did not have jurisdiction under the Indiana Administrative Adjudication Act to review the decisions of the Board with respect to federal Medicaid and Medicare matters. But the state court unquestionably had both jurisdiction to enjoin temporarily the processing of applications by the state agency pending determination of the jurisdictional issue (*United States* v. *United Mine Workers of America*, 330 U.S. 258, 290-292) and general equity jurisdiction thereafter to ensure that parties to its proceeding were not prejudiced before the State agency by the very pendency of the judicial proceeding. Accordingly, the Board was bound to comply with the terms of the injunctions. *Maness* v. *Myers*, 419 U.S. 449, 458; *Walker* v. *City of Birmingham*, 388 U.S. 307.

require the designated planning agency to process competing applications at a time when pending litigation might establish a prior entitlement in a previously unsuccessful applicant." In these circumstances, the Secretary reasonably concluded that the injunctions served to suspend the time period set forth in his regulations.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1977.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 238468 2B